IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.27183 of 1998

Dated: 27-09-2007

Between:

Y. Venku Reddy, s/o Subba Reddy,
Lorry owner AP 26-T1,
Bhakatavatchala Nagar, Near Pindi Mill,
Nellore – 4.

... Petitioner

and

The Authorised Officer,
(Divisional Forest Officer),
Nellore.

... Respondent

ORDER:

Petitioner, who is the absolute owner of the lorry bearing No.AP 26-T1, filed the present writ petition questioning the order of confiscation made by the respondent – Authorized Officer (The Divisional Forest Officer) Nellore on 24-12-1993 as confirmed by the District and Sessions Judge, Nellore in CM.A.No.4 of 1994 dated 29-04-1998.

2. Facts, in brief, are: On 30-08-1993 at about 12 hours at Mypadu Road, Nellore, the Sub-Inspector of Police, II Town (Law and Order)

Police Station Nellore, on reliable information that red sanders were being carried on in the lorry by the driver and cleaner of the lorry, chased them, intercepted and seized the lorry bearing No.AP 26-T1 belonging to the petitioner and another lorry bearing No.AP26T 3267 along with the red sanders therein. A case in Crime No.142 of 1993 under Sections 29 and 44(2-A) of the Andhra Pradesh Forest Act, 1967 (for short, 'the Act') was also registered in that regard. On a representation submitted by the petitioner, the respondent released the lorry on furnishing a bank guarantee for Rs.2,50,000/- vide proceedings in DOR.No.6/93-94/F9, dated 06-12-1994. Subsequently, the respondent after holding an enquiry passed an order on 24-12-1993 confiscating the lorry in question. Assailing the said order, petitioner filed appeal, C.M.A.No.4 of 1994 before the learned District & Sessions Judge, Nellore, who dismissed the appeal on 29-04-1998 confirming the order of confiscation made by the respondent. Pursuant to the order passed in C.M.A.No.4 of 1994,
the respondent issued notice vide proceedings dated 14-07-1998 directing the petitioner to produce the lorry before the respondent, otherwise the bank guarantee of Rs.2,50,000/- pledged by the petitioner will be forfeited to the Government. Assailing the said proceedings, the present writ petition has been filed.

3. Heard learned counsel for the parties.

4. Having heard both the learned counsel and upon perusing the material on record, this Court is of the view that the learned District and Sessions Judge erred in dismissing the appeal i.e. C.M.A.No.4 of 1994.
In fact, the petitioner stands on the very same footing as that of the owner of another vehicle bearing No. AP26T 3267. Having given a finding in the order dated 21-08-1998 passed in C.M.A.No.1 of 1994 that the said vehicle i.e. AP26T 3267 is not involved in a forest offence and ordered release of the vehicle, it must be definitely said that the learned District and Sessions Judge has erroneously concluded that the vehicle belonging to the petitioner was involved in the said forest offence. What all prompted the learned District and Sessions Judge to

come to such a conclusion is the so called statements of the driver and cleaner of the lorry in question recorded by the police officials in Crime No.142 of 1993 dated
30-08-1993. May be the said driver and cleaner of the lorry belonging to the petitioner have stated that they were transporting red sanders only at the instance of the petitioner, but the same cannot be acted upon. It must be remembered that the said statements to police officials are not sufficient to come to the conclusion that the petitioner is responsible for smuggling of the red sanders. When the same is eschewed from consideration there is absolutely no material on record to come to the conclusion that the petitioner has only instructed the driver and cleaner to transport red sanders. The entire effort of the petitioner in fighting the litigation before the Divisional Forest Officer, the learned District and Sessions Judge and this Court clearly indicate that the petitioner cannot be faulted. Further, the petitioner stands on the very same footing as that of the owner of the vehicle bearing A.P.26T 3267. No doubt, Section 44(2) of the Act empowers the Authorized Officer to seize any property or the receptacle in which it is contained, but this Court interpreting the said provision of law has stated that *mens rea* is very much required in coming to the conclusion that the owner of the crime vehicle is also having knowledge about the said offence. It is further held that in the absence of any proof that the owner of the vehicle is having knowledge, it is not safe to confiscate the vehicles.

5. As already indicated, except the so called statements of the driver and cleaner made before a police officer, there is absolutely no other incriminating evidence to come to the conclusion that the petitioner is having knowledge about the said smuggling. Hence, this Court is of the view that the petitioner is entitled for release of the vehicle.

6. Accordingly, the writ petition is allowed.
However, as the said vehicle, belonging to the petitioner,
was already released on furnishing bank guarantee, the respondent is directed to return the said bank guarantee with accrued interest

thereon, to the petitioner forthwith.

JUSTICE GOPALAKRISHNA TAMADA

Dt.27-09-2007
GLV